



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220713-0155]

RIN 0648-BL06

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule approves and implements Framework Adjustment 9 to the Atlantic Herring Fishery Management Plan. This action establishes a rebuilding plan for herring and adjusts accountability measure catch threshold triggers when catch exceeds a herring annual catch limit or management area sub-annual catch limit. This action also revises regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act. This action is necessary to respond to updated scientific information and to achieve the goals and objectives of the fishery management plan. The approved measures are intended to help prevent overfishing, rebuild the overfished herring stock, achieve optimum yield on a continuing basis, and ensure that management measures are based on the best scientific information available.

DATES: Effective [*insert date 30 days after the date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of Framework 9, including the Environmental Assessment (EA) and the Regulatory Impact Review (RIR) prepared by the New England Fishery Management Council in support of this action, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the Internet at <https://www.nefmc.org/management-plans/herring> or <http://www.regulations.gov>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281-9196, Maria.Fenton@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework Adjustment 9 to the Atlantic Herring Fishery Management Plan (FMP) on September 28, 2021. The Council submitted the framework and draft Environmental Assessment (EA) to NMFS for review on November 10, 2021. NMFS published a proposed rule for Framework 9 on March 2, 2022 (87 FR 11680). The 15-day public comment period for the proposed rule closed on March 17, 2022.

NMFS has approved all of the measures in Framework 9 recommended by the Council, as described below. This final rule implements Framework 9, which establishes a rebuilding plan for herring and adjusts accountability measure catch threshold triggers when catch exceeds a herring annual catch limit or management area sub-annual catch limit. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the

Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here. This final rule also revises regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act.

Approved Measures

This action approves the management measures proposed in Framework Adjustment 9 to the Herring FMP. The measures implemented in this final rule are:

1. Herring Rebuilding Plan

Framework 9 establishes a rebuilding plan for herring that continues the use of the acceptable biological catch (ABC) control rule that was implemented through Amendment 8 to the Herring FMP and is expected to rebuild the stock by fishing year 2026 (the first year that probability of rebuilding is estimated to be 50 percent or greater). Under the ABC control rule, when biomass (B) is at or above 50 percent of the biomass that can support harvest of the maximum sustainable yield (B_{MSY}) or its proxy, ABC is the catch associated with an F of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, F declines linearly to 0 at 10 percent of B_{MSY} or its proxy. Under the rebuilding plan, F will range from a low of 0.08 (fishing year 2023) to a high of 0.43 (fishing years 2025 and 2026) based on current stock biomass projections. The ABC control rule allows for a maximum F of 0.43 because 0.43 is 80 percent of the current estimate of F_{MSY} (0.54). The rebuilding plan will not make changes to the fishing year 2022 ABC, so the specifications that the fishery is currently operating under will not be disrupted.

2. Adjustments to Accountability Measure Catch Threshold Triggers

Framework 9 adjusts AM catch threshold triggers when a herring ACL or Management Area sub-ACL is exceeded so that an overage of a sub-ACL in one fishing year will only be deducted in a subsequent fishing year if the overage exceeds 10 percent of the sub-ACL; and/or if the ACL is also exceeded. Additionally, if a sub-ACL is exceeded by more than 10 percent and the ACL is not also exceeded, only the portion of the sub-ACL overage above 10 percent will be deducted from the appropriate sub-ACL in a subsequent fishing year. Under these regulations, the following overage scenarios are possible:

- If catch exceeds a sub-ACL by 10 percent or less but does not exceed the ACL in a given fishing year, then NMFS will not deduct any amount of the overage from the applicable sub-ACL or ACL in the fishing year following total catch determination.
- If catch exceeds a sub-ACL by more than 10 percent but does not exceed the ACL in a given fishing year, then NMFS will subtract the amount of the overage above 10 percent from the applicable sub-ACL and ACL in the fishing year following total catch determination. For example, if catch exceeds the Area 1A sub-ACL by 15 percent in a given fishing year and the ACL is not exceeded, the amount equal to the 5 percent overage will be deducted from the ACL and Area 1A sub-ACL in the fishing year following total catch determination.
- If catch exceeds a sub-ACL by any amount and also exceeds the ACL in a given fishing year, then NMFS will subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeds the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in a given fishing year, the amount equal to the 15-percent overage will be deducted

from the Area 1A sub-ACL and the amount equal to the 5-percent overage will be deducted from the ACL in the fishing year following total catch determination.

- If catch exceeds the ACL but does not exceed any sub-ACLs in a given fishing year, then NMFS will subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeds the herring ACL by 2 percent in a given fishing year and no sub-ACLs are exceeded, the amount equal to the 2-percent overage will be deducted from the ACL only in the fishing year following total catch determination. It is possible for catch to exceed the ACL even if it does not exceed any sub-ACLs because carryover from a previous fishing year may increase the applicable sub-ACLs, but not the ACL. Therefore, the sum of the individual sub-ACLs could exceed the ACL, and the fishery could harvest more than the ACL while staying within sub-ACLs.

3. Revisions and Clarifications to Existing Regulations

This final rule revises regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Act. The revisions at § 648.13(f)(1)(ii)(B), (f)(2), (f)(5), and (f)(6) clarify that vessels are not allowed to catch or transfer at sea more than 40,000 lb (18,143.7 kg) of herring per trip or calendar day if the vessel is in, or the fish were harvested from, a management area subject to a 40,000-lb (18,143.7-kg) herring possession limit. The revisions at § 648.14(r)(1)(ii)(B) clarify that it is unlawful for any person to land or attempt to land more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure. The addition of paragraph § 648.14(r)(1)(iv)(F) clarifies that it is unlawful for any person to purchase, receive, possess, have custody of, sell, barter, trade or transfer more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring, or attempt to do any of these things, from a vessel if the herring is from a management area subject to a herring possession limit pursuant to § 648.201(a). The

revisions at § 648.14(r)(1)(vii)(A) clarify that vessels may not transit or be in a management area subject to a possession limit adjustment or fishery closure with more than the applicable herring possession limit, unless such herring were caught in an area not subject to the possession limit, all fishing gear is stowed and not available for immediate use, and the vessel is issued the appropriate herring permit. The revision at § 648.201(a)(1)(i) changes the paragraph heading from “Management area closure” to “Possession limit adjustments.” The revisions at § 648.201(a)(1)(i)(A), (a)(2)(i)(B)(*I*), (a)(1)(i)(B)(2), (a)(1)(ii), (a)(2), and (a)(4)(ii) update possession limit adjustment language to be consistent with § 648.201(a)(1)(i), and clarify that vessels may not fish for, possess, transfer, receive, land, or sell more than the applicable possession limits described in those paragraphs, or attempt to do any of these things. The revisions at § 648.201(a)(1)(i)(B)(*I*) clarify that, based on catch projections, NMFS may implement a 2,000-lb (907.2-kg) herring possession limit (Phase 2) without first implementing a 40,000-lb (18,143.7-kg) possession limit (Phase 1) in Areas 2 or 3 in order to avoid impracticable transitions from Phase 1 to Phase 2 thresholds, avoid overages, or reduce the risk of exceeding the ABC. The revisions at § 648.201(b) and (c) correct typos by changing “less than” to “greater than.” The revisions at § 648.201(g)(1) update the language used in the carryover example to clarify the timing of when carryover is applied and how it is calculated. The final revision removes paragraph § 648.201(g)(2) because the carryover provisions contained within only applied to fishing years 2021 and 2022 and are therefore no longer necessary.

Proposed Rule Comments and Responses

We received two comment letters on the Framework 9 proposed rule during the public comment period. One joint comment letter was submitted on behalf of Conservation Law Foundation, Blue Planet Strategies, Natural Resources Defense Council, The Pew Charitable Trust, Whale and Dolphin Conservation, Wild Oceans, and

interested stakeholders. The other comment letter was submitted by a member of the public. Consolidated responses are provided to similar comments on the proposed measures.

Herring rebuilding plan

Comment 1: Environmental advocacy groups commented in support of the proposed herring rebuilding plan. In particular, they supported the proposed rebuilding plan because compared to the other rebuilding alternatives analyzed in Framework 9, the proposed rebuilding plan would rebuild the stock in as short a time as possible, consistent with Magnuson-Stevens Act requirements and relevant National Standard 1 guidelines. They supported the proposed rebuilding plan's use of the existing ABC control rule that was implemented through Amendment 8, which accounts for herring's role as forage in the ecosystem. They supported that compared to the other rebuilding alternatives, the proposed rebuilding plan prioritizes the benefits of rebuilding the herring stock as quickly as possible over short-term economic interests. They stated that the proposed rebuilding plan favors the needs of fishing communities because these communities will benefit from a rebuilt herring population. They noted that these benefits extend beyond the herring fishing community to other fishing communities (*e.g.*, commercial tuna fishery, lobster fishery) and industries (*e.g.*, ecotourism) that rely on herring. They also supported the proposed rebuilding plan because it had a greater chance of rebuilding in as short a time as possible with a lower chance of a fishery closure.

Response 1: We agree and have approved the herring rebuilding plan for the reasons discussed in the proposed rule and the preamble to this rule.

Comment 2: The member of the public commented that responsible management would have prevented the need for a rebuilding plan.

Response 2: We disagree. The best scientific information available on the status and biology of the stock from the 2020 Management Track Assessment show that herring

spawning stock biomass (SSB) declined during 2014-2019, with 2019 SSB estimated to be the lowest value since the late 1980s. Data also indicate that herring recruitment has been declining since 2013, hitting a historically-low level in 2019. However, data show that fishing mortality on fully recruited fish by the U.S. mobile fleet has declined since 2010, with 2019 fishing mortality estimated to be the lowest value since the early 1990s. While there are several sources of uncertainty in the stock assessment, the assessment concluded that persistent low recruitment is the primary factor driving the status of the herring stock, and that regulations reducing U.S. herring catch have prevented overfishing from occurring.

Comment 3: The member of the public commented that herring has been overfished for decades, and that MSY has long been exceeded.

Response 3: We disagree. A 2018 benchmark assessment found that the herring stock was not overfished but was approaching an overfished condition, and that overfishing was not occurring. The herring stock was not formally determined to be overfished until 2020, based on the results of the 2020 herring management track assessment. Additionally, catch data indicate that during 2008-2020, the herring ACL was not exceeded. Therefore, the fishery has not been exceeding MSY.

Comment 4: The member of the public commented that herring numbers have declined to the point where recruitment is too low to support annual harvest of the resource. They commented that there is no acceptable catch limit for a severely depleted stock, and that the importance of herring to the ecosystem merits a total ban on fishing. They commented that decisions allowing continued harvest of the resource do not constitute rebuilding.

Response: Herring is an important forage species in the Northeast U.S. shelf ecosystem for a wide variety of fish, marine mammals, and birds. However, we disagree that fishing for herring should be prohibited at this time. The current conditions do not

warrant zero fishing mortality under the ABC control rule. Consequently, implementing a ban on herring fishing under current conditions would prevent the fishery from achieving optimum yield on a continuing basis, which is inconsistent with National Standard 1 of the Magnuson-Stevens Act. Additionally, prohibiting herring fishing could result in a shortage of bait for other fisheries (*e.g.*, lobster, bluefin tuna), or could limit fishermen's ability to participate in other fisheries that overlap with herring (*e.g.*, squid, Atlantic mackerel). Therefore, the negative impacts of prohibiting herring fishing could extend beyond the herring fishery itself and into other overlapping fisheries.

This action establishes a rebuilding plan for herring that continues the use of the ABC control rule to set fishery specifications. The ABC control rule was developed using a management strategy evaluation (MSE) that accounted for herring's role as forage when evaluating ABC control rule options. The model used for herring included scenarios where herring productivity was high, as well as low, to explicitly enable the Council to evaluate the impact of ABC control rules on real-world specifications given fluctuations in herring biomass.

The ABC control rule explicitly accounts for herring as forage in the ecosystem by reserving a portion of the catch for predators, limiting F to 80 percent of F_{MSY} when biomass is high and setting it at zero when biomass is low. The ABC control rule was designed to balance the goals and objectives of the Herring FMP, including managing the fishery at long-term sustainable levels, taking forage for predators into account to support the ocean ecosystem, and providing a biologically sustainable harvest as a source of revenue for fishing communities and bait for the lobster fishery.

Comment 5: The member of the public commented that the assumption that future recruitment will resemble long-term average recruitment is highly doubtful. They commented that it is unlikely that current stock can support future generations of herring

long-term, and that continued removal of these fish will contribute to continued low recruitment.

Response 5: We agree that current recruitment may not resemble long-term average recruitment. During the development of Framework 9, sensitivity analyses were completed in order to evaluate the risk associated with different recruitment assumptions. SSB projections were generated assuming (1) long-term average recruitment, consistent with the 2020 stock assessment, and (2) autocorrelated recruitment. Under the long-term average recruitment assumption, future recruitment is predicted to be equal to median recruitment during 1965-2017. Under the autocorrelated recruitment assumption, future recruitment is predicted to be similar to the previous year plus some random variation. The results of these sensitivity analyses showed that assuming autocorrelated recruitment results in recruitment values that are more similar to recent recruitment, and that are lower than the values that result when assuming long-term average recruitment. Assuming long-term average recruitment, the stock is projected to rebuild in 5 years (in fishing year 2026). Assuming autocorrelated recruitment, the stock is projected to rebuild in 9 years (in fishing year 2030). The next herring management track assessment is scheduled to be completed in June 2022. This assessment will provide NMFS and the Council with additional data on recent herring recruitment levels, and will provide the Council with an opportunity to evaluate rebuilding progress. Once the herring rebuilding plan is implemented, NMFS will review and evaluate the stock's rebuilding progress every 2 years, consistent with Magnuson-Stevens Act requirements.

Comment 6: The member of the public commented that herring is a keystone species, and that the cost to the ecosystem of the removal of this species is not being accounted for in impact evaluations or management decisions. They commented that herring is more important to the ecosystem than it is to generating fishery profits.

Response 6: We agree that herring is an important component of the Northeast U.S. shelf ecosystem. However, we disagree that management decisions do not take herring's role in the ecosystem into account. As previously mentioned, the ABC control rule is used to set fishery specifications to prevent overfishing and explicitly account for herring as forage in the ecosystem by reserving a portion of the catch for predators .

National Standard 8 of the Magnuson-Stevens Act requires us to "...take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2) [i.e., National Standard 2], in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities" consistent with conservation requirements. Herring is an important source of revenue for some Northeast fishing vessels. Data show that 51 vessels landed a total of 9,588 mt of herring, valued at \$6.7 million, during fishing year 2020. The majority (87 percent) of herring landings were attributed to eight ports designated as "primary ports" for herring due to their substantial level of engagement with the fishery. Prohibiting herring fishing would lead to negative economic impacts to the vessels and communities that rely on revenue from this species. Additionally, prohibiting herring fishing would prevent the fishery from achieving optimum yield on a continuing basis, which is inconsistent with National Standard 1 of the Magnuson-Stevens Act.

Further, as noted above, herring is an important source of bait for the lobster and bluefin tuna fisheries, and vessels that participate in the herring fishery often also participate in other co-occurring fisheries (*e.g.*, mackerel, squid). Prohibiting herring fishing could result in a shortage of bait, or could limit fishermen's ability to access to co-occurring fisheries using gear that could catch herring. A prohibition on herring fishing under current conditions would unnecessarily constrain participation in these other fisheries, impacting their ability to achieve optimum yield and resulting in negative

economic impacts to the vessels and communities that rely on those resources. Therefore, the impacts of prohibiting herring fishing could extend far beyond the herring fishery to other overlapping fishing communities as well.

Changes from the Proposed Rule

This final rule makes revisions to the regulations at § 648.201(a)(1)(i)(B)(I) and (2) that were not included in the proposed rule. The revisions clarify regulations that were discussed and implemented in the Framework Adjustment 8 interim final rule. The revisions are consistent with the discussion in the Framework 8 rules and are made under our authority under section 305(d) of the Magnuson-Stevens Act to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These revisions expressly state that we may implement Phase 2 of the possession limit adjustment process (2,000-lb (907.2-kg) possession limit) in Area 2 or 3 before implementing Phase 1 (40,000-lb (18,143.7-kg) possession limit) in order to avoid overages and reduce the risk of catch exceeding the ABC. In years when herring sub-ACLs are low, the high volume nature of the fishery and the limited amount of time between the fishery catching 90 percent of the Area 2 or 3 sub-ACL (the trigger for implementing Phase 1) and 98 percent of the sub-ACL (the trigger for implementing Phase 2) can make it impracticable and risky to implement the 40,000-lb (18,143.7-kg) limit before implementing the 2,000-lb (907.2-kg) limit in these areas. The final rule implementing Framework 8 explained that in certain instances NMFS may need to bypass Phase 1 and immediately implement Phase 2 based on the most recent catch information, and we are revising the regulations in this final rule to expressly note this authority in the regulations and the reasons for exercising it. We received no comments on these provisions during the Framework 8 rulemaking, and the regulated community already understands that Phase 1 may be bypassed to immediately implement Phase 2. In fact, since the two-step possession limit adjustment process was implemented in 2021,

NMFS twice has bypassed the Phase 1 40,000-lb possession limit and instead immediately implemented the 2,000-lb possession limit in Area 3 (in March 2021 and again in February 2022).

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator is promulgating final regulations that have been determined to be consistent with the Herring FMP, provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this final rule is not significant pursuant to Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This final rule does not contain any new information collection requirements, including reporting or recordkeeping requirements, for the purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 13, 2022.

Kimberly Damon-Randall,
Acting Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.13, revise paragraphs (f)(1)(ii)(B), (f)(2)(ii), (f)(5), and (f)(6) to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than the applicable 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) herring possession limit may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(2) * * *

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than the applicable 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) herring possession limit may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

* * * * *

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than the applicable 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) herring possession limit may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

* * * * *

3. In § 648.14:

- a. Revise paragraphs (r)(1)(ii)(B);
- b. Add paragraph (r)(1)(iv)(F); and
- c. Revise paragraph (r)(1)(vii)(A).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(B) Attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell, more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure, or from a river herring and shad catch cap closure area that has been closed to specified gear pursuant to § 648.201(a)(4)(ii), if the vessel has been issued and holds a valid herring permit.

* * * * *

(iv) * * *

(F) Purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, or attempt to purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, more than the applicable 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) possession limit of herring from a vessel if the herring is from a management area subject to a possession limit for Atlantic herring pursuant to § 648.201(a).

* * * * *

(vii) * * *

(A) Transit or be in an area subject to a possession limit adjustment or fishery closure pursuant to § 648.201(a) with more than the applicable 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) herring possession limit, unless such herring were caught in an

area not subject to the 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) limit specified in § 648.201(a), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

* * * * *

4. In § 648.201:

- a. Revise paragraphs (a)(1)(i) introductory text, (a)(1)(i)(A), (a)(1)(i)(B)(I) and (2), (a)(1)(ii), (a)(2), (a)(3), (a)(4)(ii), (b), (c), (g)(1); and
- b. Remove and reserve paragraph (g)(2).

The revisions read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(a) * * *

(1) * * *

(i) *Possession Limit Adjustments--(A) Areas 1A and 1B Possession Limit*

Adjustment. If NMFS projects that catch from Area 1A or 1B will reach 92 percent of the annual sub-ACL allocated to Area 1A or Area 1B, before the end of the fishing year, or 92 percent of the Area 1A sub-ACL allocated to the seasonal period as set forth in paragraph (d) of this section, beginning the date the catch is projected to reach 92 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(B) * * *

(1) Possession Limit Adjustment - Phase 1. If NMFS projects that catch from Area 2 or Area 3 will reach 90 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 90 percent of the applicable sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 40,000 lb (18,143.7 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. Based on catch projections in relation to the amount of catch available between the applicable 90 percent (Phase 1) and 98 percent (Phase 2) sub-ACL adjustment thresholds, NMFS may bypass implementing this Phase 1, 40,000-lb (18,143.7-kg) possession limit and instead implement the Phase 2, 2,000-lb (907.2-kg) possession limit described at § 648.201(a)(1)(i)(B)(2) as warranted to avoid impracticable transitions from Phase 1 to Phase 2 thresholds, avoid overages, or reduce the risk of exceeding the ABC. NMFS shall implement these restrictions in accordance with the APA.

(2) Possession Limit Adjustment - Phase 2. If NMFS projects that catch will reach 98 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 98 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. Based on catch projections, NMFS may implement this Phase 2, 2,000-lb (907.2-kg) possession limit without first implementing the Phase 1, 40,000-lb (18,143.7-kg) possession limit described at § 648.201(a)(1)(i)(B)(1) as warranted to avoid impracticable transitions from Phase 1 to Phase 2 thresholds, avoid overages, or reduce the risk of exceeding the ABC. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, beginning the date the catch is projected to reach 95 percent of the ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.90(a)(4)(iii)(D) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, *i.e.*, the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3) of this part, may fish for, possess, transfer, receive, land, or sell herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel's gear is not available for immediate use as defined in § 648.2 while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

(3) *ACL and sub-ACL overage deductions.* (i) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by 10 percent or less and the ACL was not exceeded in a given fishing year, then NMFS shall not deduct any amount of the overage

from the applicable sub-ACL or ACL in the fishing year following total catch determination.

(ii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by greater than 10 percent and the ACL was not exceeded in a given fishing year, then NMFS shall subtract the amount of the overage above 10 percent from the ACL and applicable sub-ACL in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent in Year 1 and the ACL was not exceeded, the amount equal to the 5 percent overage would be deducted from the ACL and Area 1A sub-ACL in Year 3.

(iii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by any amount and the ACL was also exceeded in a given fishing year, then NMFS shall subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in Year 1, the amount equal to the 15-percent overage would be deducted from the Area 1A sub-ACL and the amount equal to the 5-percent overage would be deducted from the ACL in Year 3.

(iv) If NMFS determines that total catch exceeded the Atlantic herring ACL and no herring sub-ACLs were exceeded in a given fishing year, then NMFS shall subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeded the herring ACL by 2 percent in Year 1, the amount equal to the 2-percent overage would be deducted from the ACL in Year 3, and no sub-ACLs would be reduced.

(v) NMFS shall make overage determinations and implement any changes to ACLs or sub-ACLs, through notification in the Federal Register, and if possible, prior to the start of the fishing year during which the reduction would occur.

(4) * * *

(ii) Beginning on the date that NMFS projects that river herring and shad catch will reach 95 percent of a catch cap for specified gear applicable to an area specified in § 648.200(f)(7) for the remainder of the fishing year, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip using the applicable gear in the applicable catch cap closure area, specified in § 648.200(f)(8), and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

* * * * *

(g) * * *

(1) Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for Year 1, not the sub-ACL for Year 1 as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring caught from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 100 mt of herring is added as carryover from Year 1 to a 5,000 mt sub-ACL in Year 3, catch in that management area would be tracked against a total sub-ACL of 5,100 mt. NMFS shall add sub-ACL carryover only if catch does not exceed the Year 1 ACL, specified consistent with § 648.200(b)(3). The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

(2) [Reserved]

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